IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 4784 OF 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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ANAND MUNICIPALITY - Petitioner(s)
Versus
KAMDAR KARMACHARI UNION & ORS. - Respondent(s)

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Appearance :
Shri D.G. Chauhan for Petitioner(s).
Shri Murali N. Devnani for Respondent(s) : 1,
Ms. Manisha Lavkumar, AGP for Respondent(s) : 2.
Shri Amar D. Mithani for Respondent(s) : 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/09/2007

ORAL JUDGMENT

Present is a petition under Article 227 of the Constitution of India against the award dated 9th February, 2000 passed by the learned

Industrial Court, Nadiad in Reference (ITN) No.204 of 1998, holding the petitioner-Municipality liable to pay the bonus to the employees engaged under the Malaria Eradication Programme.

2. It is not in dispute before me that respondent Nos.2 and 3, State of Gujarat and Government of India respectively, were not parties - non-applicants before the learned Court below, nor any reference was made against them. It is also not in dispute before me that the present petitioner, who was non-applicant before the learned Court below, never raised any objection before the lower Court that the liability to pay salary, bonus, wages, pay and allowances, being on the State Government or the Central Government, the appropriate Governments were necessary parties. In this petition, after suffering the award, when this petition came to be filed, respondent Nos.2 and 3 were joined as party respondents. On being asked, Shri D. G. Chauhan, learned Counsel for the petitioner, submitted that no permission was sought from the High Court to join respondent Nos.2 and 3 as party respondents. In a petition under Article 227 of the Constitution of India, the law requires the petitioner to join only those persons as parties, who were parties before the subordinate Court. In the present case, without permission of the Court or even without telling the Court that certain persons, who were not parties to the proceedings, came to be joined as party respondents. This action certainly would be bad on the part of the

present petitioner. During the course of the arguments, Shri Chauhan, learned Counsel for the petitioner, submitted that the liability being of the State/Central Government, they were rightly joined as parties, but, in the opinion of this Court, such argument would not be allowed to be raised before this Court. At the High Court level, in the proceedings under Article 227 of the Constitution of India, when new parties are joined, they would stand on a footing where they would have no opportunity to lead evidence or project their defence. If the present petitioner was of the opinion that the baby nursed by the petitioner could not be disowned by the State Government or the Central Government and they were responsible to feed the baby, then, such an objection should have been raised before the lower Court with a specific objection that they be joined as parties non-applicants because the ultimate liability would be of such persons.

3. In view of the aforesaid discussion, the party respondent Nos.2 and 3 cannot be allowed to continue on record, they are directed to be deleted. Office is directed to make necessary amendment in the cause title of the Writ Application within 10 days.

4. It is not in dispute before me that the employees were engaged by the present petitioner, they were the appointing authority and they were the disciplinary authority. If such powers could be

exercised by the petitioner, then, it could not disown such employees simply on the ground that the pay and allowances, to which such employees were entitled, were to be paid 50 – 50 by the State Government and the Central Government. Once it is proved that the workmen were the employees of the present petitioner, then, the present petitioner was answerable to their claim. It would have been a different thing to contend before the appropriate Government that the responsibility to pay bonus would be of the Central Government/State Government. Shri Chauhan tells me that in accordance with certain interim directions, the petitioner approached the State Government for release of money to meet the expenses towards bonus, but, the State Government rejected the same. If that be so, the petitioner certainly could challenge the order of the State Government, with a submission that if they had to employ certain people in view of the directions issued by the Government, with an assurance that their pay and allowances would be paid 50 – 50 by the State Government and the Central Government. *Qua* the employees/workmen, the petitioner cannot disown its liability simply on the ground that if they are not to be reimbursed, they would not make the payment. The learned Court below was justified in holding the present petitioner answerable to the claim lodged by respondent No.1.

5. Shri Murali N. Devnani, learned Counsel for respondent

No.1, in his fairness, submitted that as and when the Government declared that the employees of the Municipality would be entitled to bonus, then, every Municipality is obliged to distribute the bonus. The fact is not disputed by Shri Chauhan, learned Counsel for the petitioner.

6. Under the circumstances, it is hereby directed, for the purposes of clarification, that if the State Government had issued directions for payment/distribution of the bonus in favour of the employees of the Municipality or local body only, then, the petitioner would be obliged to observe the mandate issued by the Government. In the present case, if the State Government had already issued such directions/notifications for the period beyond 1986-87, then, the employees of the Municipality, which would include the workmen employed under the Malaria Eradication Programme, would be entitled to bonus.

7. The petition with the clarification is dismissed. Rule is discharged. Interim relief, if any, is vacated. No order as to costs.

[R.S.Garg, J.]

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